



#14

9200/2122

PATENT

Customer No. 22,852

Attorney Docket No. 06502.0302-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Paul J. HINKER

Application No.: 09/686,628

Filed: October 12, 2000

For: AUTOMATIC CONVERSION OF SOURCE
CODE FROM 32-BIT TO 64-BIT

ATTN: Petitions Office

Group Art Unit: 2122

Examiner: Gross, Kenneth A.

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

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MAY 17 2004

Technology Center 2100

Sir:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Applicant hereby petitions the Commissioner for Patents, under the provisions of 37 C.F.R. § 1.181, to withdraw the holding of abandonment of the above-identified application. Applicant contends that the application is not in fact abandoned and, therefore, this petition under 37 C.F.R. § 1.181 is appropriate (See M.P.E.P. § 711.03(c)). This petition is being filed within two (2) months of the mail date of the Notice of Abandonment (attached) and is thus timely under 37 C.F.R. § 1.181(f).

The following prosecution history is relevant to this petition:

1. In response to the Office Action of June 23, 2003, Applicants filed an Amendment on September 22, 2003, as evidenced by a date-stamped postcard (attached as Exhibit A) showing receipt of the Amendment by the PTO.
2. The Examiner called Applicant's representative in December 2003, inquiring as to the status of the application. During that call, the Examiner indicated that the Amendment filed September 22, 2003, had not been received.

3. On December 29, 2003, Applicant's representative faxed to the PTO (using the number provided by the Examiner) a copy of the Amendment as filed on September 22, 2003, along with a copy of the stamped postcard showing receipt of the Amendment by the PTO. Applicant's representative received a return receipt confirmation of the facsimile transmission (attached as Exhibit B) from the PTO on December 29, 2003, showing the fax cover page and indicating receipt of 20 pages.
4. The Examiner called Applicant's representative in February 2004, inquiring as to the status of the application. The Examiner indicated that he had not received the Amendment and, in response to our further inquiry, Information Disclosure Statements that were filed on October 15, 2003, January 20, 2004, and January 27, 2004.
5. On February 6, 2004, Applicant's representative faxed to the PTO a copy of the September 22, 2003 Amendment and a copy of the accompanying date-stamped postcard. Applicant's representative also faxed copies of the IDSs filed October 15, 2003, January 20, 2004, and January 27, 2004, along with copies of checks 079177, 082320, and 082563 accompanying the IDSs, a copy of the first page of each cited document, and copies of the date-stamped postcards showing receipt of the IDSs by the PTO. A return receipt confirmation of the facsimile (attached as Exhibit C) was received from the PTO on February 6, 2004, showing the fax cover page and indicating receipt of 48 pages.
6. A Notice of Abandonment (with a mailing date of March 23, 2004) was issued by the Examiner, alleging a failure by Applicant to timely file a proper reply to the Office letter mailed on June 23, 2003. The Examiner alleged in the Notice that the Office received no reply to the June 23, 2003 Action.
7. Applicant's representative contacted the Examiner by telephone on March 26, 2004. During that conversation, the Examiner indicated that he had not received the facsimile correspondence and that he would contact Applicant's representative again after discussing the issue with his supervisor. No further communication has been received from the Examiner.

Contrary to the Examiner's allegations in the Notice of Abandonment, the PTO has indeed received a reply to the June 23, 2003 Office Action. The PTO received Applicant's Amendment, which was responsive to the June 23, 2003 Action, three times (once by courier and twice by facsimile), as evidenced by the attached stamped postcard and facsimile confirmations. The response was originally filed within three months of the mailing date of the June 23, 2003 Office Action and was therefore timely filed. For the foregoing reasons and in

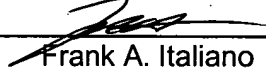
view of the attached evidence, the Examiner's holding of abandonment is clearly erroneous. Accordingly, Applicant respectfully requests that the holding of abandonment of the application be withdrawn.

As stated in M.P.E.P. § 711.03(c), this petition does not require a fee. If there are any other fees due in connection with the filing of this Petition, however, including any fees required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested, and the Commissioner is authorized to charge any related fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 12, 2004

By: 
Frank A. Italiano
Reg. No. 53,056

Attachments: Exhibit A – Copy of date-stamped postcard showing receipt by the PTO of the Amendment filed September 22, 2003.

Exhibit B – Return receipt confirmation of facsimile transmission, dated December 29, 2003.

Exhibit C – Return receipt confirmation of facsimile transmission, dated February 6, 2004.



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EXHIBIT A



JAB/FAI

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PLEASE STAMP TO ACKNOWLEDGE RECEIPT OF THE FOLLOWING:

In Re Application of: Paul J. HINKER

Application No.: 09/686,628

Group Art Unit: 2122

Filed: October 12, 2000

Examiner: Kenneth A. Gross

For: AUTOMATIC CONVERSION OF SOURCE CODE FROM 32-BIT TO 64-BIT

1. Amendment



Dated September 22, 2003

Docket No.: 6502.0302

(Due Date: September 23, 2003)

JAB/FAI:J. Walker - Mail Drop 878

D/K/Ed
9/23/03
JWC



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EXHIBIT B



Auto-Reply Facsimile Transmission

MAY 12 2004

TO:

Fax Sender at 202 408 4400

Fax Information

Date Received:

2/6/2004 1:18:32 PM [Eastern Standard Time]

Total Pages:

48 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received
Cover
Page
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FEB 06 2004 13:20 FR FINNEGAN HENDERSON 202 408 4400 TO 97030729306# P.01

LAW OFFICES
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.
1300 I Street, NW
Washington, DC 20005

Telephone
(202) 408-4000

Facsimile
(202) 408-4400

FACSIMILE TRANSMITTAL

TO	FROM
Name: Examiner Kenneth A. Gross (Group 2122) USPTO	Name: Frank A. Italiano
Fax No.: (703) 872-9306	Phone No.: (202) 408-4460
Phone No.: (703) 305-0542	Fax # Verified by: Joy Walker - MD #878
Subject: Serial No. 09/686,628 <u>Our Reference: 06502.0302</u>	# Pages (Incl. this) 49 Date: February 6, 2004

Confirmation Copy to Follow: No

Message:

Enclosed are copies of the following:

- (1) Amendment filed on September 22, 2003, together with a copy of the date-stamped postcard indicating the filing of this paper on September 22, 2003;
- (2) Information Disclosure Statement filed on October 15, 2003, together with a copy of Check No. 079177, the first page of the cited document, and the date-stamped postcard indicating the filing of these papers on October 15, 2003;
- (3) Information Disclosure Statement filed on January 20, 2004, together with a copy of Check No. 082320, the first page of the cited references, and the date-stamped postcard indicating the filing of these papers on January 20, 2004; and
- (4) Information Disclosure Statement filed on January 27, 2004, together with a copy of Check No. 082563, the first page of the cited references, and the date-stamped postcard indicating the filing of these papers on January 27, 2004.

If there is a problem with this transmission, notify fax room at (202) 408-4174 or the sender at the number above.

This facsimile is intended only for the individual to whom it is addressed and may contain information that is privileged, confidential, or exempt from disclosure under applicable law. If you have received this facsimile in error, please notify the sender immediately by telephone (collect), and return the original message by first-class mail to the above address.

PAGE 1/48 * RCVD AT 26/2004 1:18:32 PM [Eastern Standard Time] * SVR:USPTO-EF00F-00 * DMS:372K304 * CSID:202 408 4400 * DURATION (mm:ss):18:48

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EXHIBIT C

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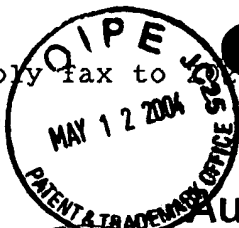
MAY 17 2004

Technology Center 2100

USPTO
TO: Auto-reply fax to

12/29/2003 11:21 AM PAGE 001
408 4400 COMPANY:

Fax Server



Auto-Reply Facsimile Transmission

TO:

Fax Sender at 202 408 4400

Fax Information

Date Received:

12/29/2003 11:10:52 AM [Eastern Standard Time]

Total Pages:

20 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

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DEC 29 2003 11:08 FR FINNEGAN HENDERSON 202 408 4400 TO 7038729306#

P. 01

LAW OFFICES
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.
1300 I Street, NW
Washington, DC 20005

Telephone
(202) 408-4000

Facsimile
(202) 408-4400

FACSIMILE TRANSMITTAL

TO

Name: Group 2122 - Kenneth A. Gross

USPTO

Fax No.: 703 872 9306

Phone No.: 703 305 0542

Date: December 29, 2003

Subject: 09/888,628

FROM

Name: Frank A. Italiano

Phone No.: (202) 408 4460

Fax # Verified by: FAI

Pages (incl. this): 20

Our File No.: 06502.0302-00

Confirmation Copy to Follow: N

Message:

Amendment filed 09/22/03 attached.

If there is a problem with this transmission, notify fax room at (202) 408-4174 or the sender at the number above.

This facsimile is intended only for the individual to whom it is addressed and may contain information that is privileged, confidential, or exempt from disclosure under applicable law. If you have received this facsimile in error, please notify the sender immediately by telephone (collect), and return the original message by first-class mail to the above address.

PAGE 129 * RCVD AT 12/29/2003 11:10:52 AM [Eastern Standard Time] * EVR:USPTO-EFXRF-104 * DNIS:8729306 * CSID:202 408 4400 * DURATION from-esp:10:14

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